



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2019-0382; FRL-9996-83-Region 1]

Air Plan Approval; Rhode Island; Prevention of Significant Deterioration; PM₁₀, PM_{2.5} and NO_x.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the State of Rhode Island's State Implementation Plan (SIP) relating to the regulation of fine particulate matter (that is, particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers, generally referred to as "PM_{2.5}"), PM₁₀ (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers), and nitrogen oxides (NO_x) within the context of Rhode Island's Prevention of Significant Deterioration (PSD) permitting program. The EPA is also proposing to take action on other minor changes to Rhode Island's PSD permitting program. In addition, EPA is proposing to convert several conditionally approved infrastructure SIP elements to fully approved elements in relation to the 2008 ozone, 2008 lead, 2010 nitrogen dioxide and the 1997 and 2006 PM_{2.5} National Ambient Air Quality Standards (NAAQS). These actions are being taken in accordance with the Clean Air Act (CAA).

DATES: Written comments must be received on or before **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R01-OAR-2019-0382 at <https://www.regulations.gov>, or via email to dahl.donald@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of

submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www.epa.gov/dockets/commenting-epa-dockets>. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square – Suite 100, Boston, MA. The EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Donald Dahl, Air Permits, Toxics, and Indoor Programs Branch, EPA Region 1 Regional Office, 5 Post Office Square – Suite 100, mail code 5-02, Boston, MA 02109-3912, tel. (617) 918-1657, email: dahl.donald@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean the EPA.

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I. Background and Purpose

The State of Rhode Island's PSD permitting program is established in Title 250 – Rhode Island Department of Environmental Management, Chapter 120 – Air Resources, Subchapter 05 – Air Pollution Control, Part 9 – Air Pollution Control Permits (Part 9). Revisions to the PSD program were last approved into the Rhode Island SIP on October 24, 2013 (78 FR 63383). Rhode Island has authority to issue and enforce PSD permits under its SIP-approved PSD program.

On March 26, 2018, the Rhode Island Department of Environmental Management (RI DEM) submitted to the EPA a formal revision to its SIP. On February 6, 2019, RI DEM submitted to the EPA a letter clarifying its intent to only incorporate certain elements of its March 2018 submittal for inclusion into the Rhode Island SIP. The RI DEM SIP submittal, and subsequent clarification letter, were submitted to address $PM_{2.5}$ and PM_{10} in PSD permitting regulations, to specifically address NO_x as a precursor for ozone, and to revise other minor changes to Rhode Island's PSD permitting program. This submittal also sought to satisfy an April 20, 2016 conditional approval (81 FR 23175) for the 2008 ozone, 2008 lead, 2010 nitrogen dioxide and the 1997 and 2006 $PM_{2.5}$ NAAQS infrastructure SIPs (I-SIPs) only as it relates to the aspects of the PSD program pertaining to NO_x as a precursor for ozone and changes made to 40 CFR part 51.166 in the EPA's October 20, 2010 rulemaking (75 FR 64864) concerning emissions of $PM_{2.5}$.

In the EPA's April 20, 2016 conditional approval, we cite a February 18, 2016 letter from RI DEM which commits to making the necessary changes to address the deficiencies in the Rhode

Island SIP. RI DEM's March 2018 SIP submittal and February 2019 clarification letter satisfy the State's earlier commitment.

II. Analysis of Rhode Island's SIP Revision

The EPA performed a review of Rhode Island's proposed revisions and has determined that they are consistent with EPA's PSD program regulations and also rectify the deficiencies indicated in our April 20, 2016 conditional approvals.

Since the EPA's last approval of amendments to RI DEM's Part 9, the State has undertaken a new codification system that results in different citations between the current state regulations and the Rhode Island SIP. Due to the State's new codification system, there are instances where the state regulation being submitted for approval into the SIP at this time does not mesh precisely within the existing codification structure of the Rhode Island SIP. As a matter of substantive legal requirements, however, the regulations approved into the Rhode Island SIP, including those we are approving today, are harmonious and clear.

Below, we describe exactly how each definition and provision within Part 9, as adopted by Rhode Island and in effect on April 5, 2018, and that we are approving into Rhode Island's SIP through this notice, is consistent with the EPA's regulations and how it will be incorporated into the SIP. In most instances, the proposed amendments to the SIP are straightforward, aligning with existing provisions in EPA's PSD regulations at 40 CFR part 51.166 and thus need no detailed explanation other than clarification as to how the proposed amendments will mesh with the existing SIP's structure and codification. Our analysis of each proposed amendment is provided below:

1. Amendment to the definition of "Baseline concentration" in Section 9.5.C.2., which corresponds to Section 9.5.I(b) in the currently approved Rhode Island SIP. This amendment

restructures the definition and is consistent with the definition of “Baseline concentration” in 40 CFR 51.166(b)(13).

2. Amendment to the definition of “Increment” in Section 9.5.C.3., which corresponds to Section 9.5.1(d) in the currently approved Rhode Island SIP. This amendment adds Class II increment values for both annual and 24-hr maximum PM_{10} and $PM_{2.5}$. The State’s new Class II increments are consistent with the increment values for these pollutants in 40 CFR 51.166(c).

3. Amendment to the definition of “Major Source Baseline Date” in Section 9.5.C.4., which corresponds to Section 9.5.1(e) in the currently approved Rhode Island SIP. This amendment adds a major source baseline date for PM_{10} and $PM_{2.5}$ consistent with 40 CFR 51.166(b)(14)(i) and adds language for establishing the baseline date consistent with 40 CFR 51.166(b)(14)(iii).

4. Amendment to the definition of “Major Stationary Source” in Section 9.5.C.6., which corresponds to Section 9.5.1(g) in the currently approved Rhode Island SIP. This amendment adds language stating that a source that is major for NO_x is also major for ozone, which is consistent with 40 CFR 51.166(b)(1)(ii).

5. Amendment to the definition of “Minor Source Baseline Date” in Section 9.5.C.5., which corresponds to Section 9.5.1(f) in the currently approved Rhode Island SIP. This amendment adds a specific minor source baseline date for $PM_{2.5}$ and is consistent with 40 CFR 51.166(b)(14)(ii)(c).

RI DEM’s PSD regulations are structured in a way that uses actual specific dates based on submission of a first complete PSD application to set the minor source baseline date for a particular pollutant. The approach contained in EPA’s regulations is somewhat different in the sense that instead of using actual specific dates, EPA articulates the concept of a first complete PSD application as the minor source baseline date after a specified trigger date and does not reference any one specific date. The minor source baseline date for $PM_{2.5}$ in RI DEM’s

regulations is explicitly stated as March 29, 2016, which corresponds to the date when the RI DEM received the first complete PSD permit application that was significant for PM_{2.5}.

Additionally, there can only be one minor source baseline date statewide since Rhode Island's SIP defines the baseline area as the entire State.

6. Amendment to the definition of "Regulated NSR Pollutant" in Section 9.5.A.36., which corresponds to Section 9.1.36 in the currently approved Rhode Island SIP. This amendment adds the gaseous form of PM₁₀ and PM_{2.5} emissions, that condense into particulates at ambient temperatures, as direct emissions of PM₁₀ and PM_{2.5}. This amendment is consistent with 40 CFR 51.166(b)(49)(i)(a).

7. Amendment to the definition "Subject to Regulation" in Section 9.5.A.41., which corresponds to Section 9.1.41 in the currently approved Rhode Island SIP. This amendment removes sources, referred to as "step 2" sources of greenhouse gases (GHG), from having to obtain a PSD permit solely due to its GHG emissions and is consistent with 40 CFR 51.166(b)(48)(iv).

In Step 2 of the GHG Tailoring Rule, which applied as of July 1, 2011, the PSD and title V permitting program requirements applied to some sources that were classified as major sources based solely on their GHG emissions or potential to emit GHGs. Step 2 also applied PSD permitting requirements to modifications of otherwise major sources that would increase only GHG emissions above the level in the EPA regulations. The EPA generally described the sources covered by PSD during Step 2 of the GHG Tailoring Rule as "Step 2 sources" or "GHG-only sources." The United States Supreme Court invalidated the EPA's regulation of Step 2 sources in *Utility Air Regulatory Group (UARG) v. EPA*, 134 S Ct. 2427 (2014). In accordance with that decision, the United States Court of Appeals for the District of Columbia Circuit vacated the federal regulations that implemented Step 2 of the GHG Tailoring Rule. See *Coalition for*

Responsible Regulation, Inc. v. EPA, 606 Fed. Appx. 6, 7 (D.C. Cir. 2015). Subsequently, the EPA removed the vacated elements from its rules. See 80 FR 50199 (August 19, 2015). The EPA therefore has the authority to approve a state's request to remove Step 2 sources from the SIP. EPA finds that removing Step 2 sources from the SIP is also consistent with Section 110(l) of the CAA, which states that the EPA shall not approve a revision to the SIP if the revision would interfere with any applicable requirement concerning attainment (of the NAAQS) and reasonable further progress (as defined in CAA section 7501) or any other requirement of the CAA.

8. Elimination of the restriction on increment consumption in Section 9.9.2 which corresponds to Section 9.5.3(a) in the currently approved Rhode Island SIP. This amendment allows a new major stationary source or a major modification to a stationary source to consume all available increment. This amendment is consistent with 40 CFR 51.166(k)(1)(ii).

The removal of the restriction on increment consumption is also consistent with Section 110(l) of the CAA, which states that the EPA shall not approve a revision to the SIP if the revision would interfere with any applicable requirement concerning attainment (of the NAAQS) and reasonable further progress (as defined in CAA section 7501) or any other requirement of the CAA. Prior to this amendment, the Rhode Island SIP limited the amount of increment that a new major stationary source or major modification could consume to 75% of the remaining 24-hr increment and 25% of the remaining annual increment. Although the State's amendment removes these limits on the amount of available increment that can be consumed, the amendment does not allow a source to consume more increment than is available. See Subchapter 05, Part 9, Section 9.9.1.A.2.a(2) of Rhode Island's Air Resources Regulations.

9. Amendment to the provisions in Section 9.9.2.A.5.e(3), which corresponds to Section 9.5.3(c)(5)c in the currently approved Rhode Island SIP. This amendment prohibits emissions from temporary sources of sulfur dioxide, nitrogen oxides, and particulate matter to be excluded

from increment consumption if the temporary emissions would impact a Class I area. The State's amended regulation is consistent with 40 CFR 51.166(f)(4)(iii)(a).

10. Amendment to the table in Section 9.9.4.A., which corresponds to the table at Section 5.5 in the currently approved Rhode Island SIP. This amendment adds thresholds for annual and 24-hr PM_{2.5} emissions that, if exceeded, requires a new major stationary source or a source making a major modification to comply with nonattainment new source review requirements. This amendment is consistent with and, in certain respects, more stringent than 40 CFR 51.165(b)(2).

III. Proposed Action

Based on our analysis, the EPA is proposing to approve the Rhode Island SIP revision, submitted by RI DEM to EPA on March 26, 2018 and clarified by a letter dated February 6, 2019. The EPA is also proposing to convert its April 20, 2016 conditional approval to a full approval for the 2008 ozone, 2008 lead, 2010 nitrogen dioxide and the 1997 and 2006 PM_{2.5} NAAQS I-SIPs as it relates to the aspects of the PSD program pertaining to NO_x as a precursor for ozone and changes made to 40 CFR part 51.166 in the EPA's October 20, 2010 rulemaking concerning emissions of PM_{2.5}.

The EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

IV. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the Rhode Island rules regarding definitions and permitting

requirements discussed in section II of this preamble. The EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: July 16, 2019.

Deborah Szaro,
Acting Regional Administrator,
EPA Region 1.

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